



OFFICE OF THE ATTORNEY GENERAL - STATE OF TEXAS
JOHN CORNYN

April 26, 2001

Mr. John Steiner
Division Chief
City of Austin - Law Department
P.O. Box 96
Austin, Texas 78767-96

OR2001-1703

Dear Mr. Steiner:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146482.

The City of Austin (the "city") received a request from a city employee for records pertaining to the requestor's complaint of sexual harassment against a city police officer. You contend that the requested information is excepted from required public disclosure pursuant to section 552.103 of the Government Code.¹

Section 552.301 of the Government Code dictates the procedure that a governmental body must follow when it seeks a decision from the attorney general as to whether requested information falls within an exception to disclosure. Among other requirements, the governmental body must submit to this office "a copy of the written request for information." Gov't Code § 552.301(e)(1)(B). Otherwise, the requested information "is presumed to be subject to required public disclosure and must be released unless there is a compelling reason to withhold the information." Gov't Code § 552.302. We did not receive a copy of the written request in either of your submissions to this office, nor have you provided this office with a "compelling" reason for withholding the information at issue. *See Open Records*

¹The requestor also seeks information about any other investigations conducted by the city's police department against the officer concerning sexual misconduct and the disciplinary actions taken. You inform us that the city possesses no records responsive to this portion of the request.

comes under the protection of exception to disclosure intended to protect privacy interests constitutes compelling reason for non-disclosure). Section 552.103 is a discretionary exception that does not make information confidential.² Moreover, we know of no other law that would make the submitted information confidential. We therefore conclude that because you did not comply with the requirements of section 552.301(e)(1)(B), the requested information is now presumed to be public and must be released to the requestor in its entirety.

Finally, we note that you submitted to this office as responsive to the request only an internal memorandum, dated December 20, 2000, from the chief of police to the director of the city's civil service commission. To the extent that the records request encompasses any other records pertaining to the requestor's complaint, *e.g.*, records from the internal affairs investigation, those records also must be released in their entirety. *See* Loc. Gov. Code § 143.089(a)(2) (civil service file must contain any letter, memorandum, or document relating to any misconduct if the misconduct resulted in disciplinary action in accordance with chapter 143).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the

²Discretionary exceptions are intended to protect only the interests of the governmental body, as distinct from exceptions which are intended to protect information deemed confidential by law or the interests of third parties. *See, e.g.*, Open Records Decision Nos. 630 at 4 (1994) (governmental body may waive attorney-client privilege, section 552.107(1)), 592 at 8 (1991) (governmental body may waive section 552.104, information relating to competition or bidding), 549 at 6 (1990) (governmental body may waive informer's privilege), 522 at 4 (1989) (discretionary exceptions in general). Discretionary exceptions therefore do not constitute "other law" that makes information confidential.


statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.321⁵(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Steven Bohl". The signature is fluid and cursive, with the first name "J." and last name "Bohl" clearly distinguishable.

J. Steven Bohl
Assistant Attorney General
Open Records Division

JSB/RWP/seg

Ref: ID# 146482

Encl. Submitted documents